

Adding New Signatories to the Convention

In mid-1999 the OECD secretariat sought guidance from signatories about how to deal with the increasing number of requests for accession to the Convention. The primary focus of the United States and the Working Group on Bribery was then, and continues to be, the completion of ratification and implementation of the Convention by all thirty-four signatory states. It has become clear, however, that a targeted expansion of Convention membership to appropriate states could make a significant contribution to the general elimination of bribery of foreign public officials in international business transactions.

Despite this general agreement and existing guidance in the Convention and its Commentaries on the subject of expansion, the Working Group initially was unable to agree on a selection mechanism or precise criteria for new signatory states. That signatories anticipated further expansion is clear enough. Article 13.2 of the Convention provides that it shall be open to accession by nonsignatories that have become full participants in the OECD Working Group on Bribery or any successor to its functions. In the OECD Commentaries on the Convention, nonsignatories are encouraged to participate in the Working Group provided that they accept the 1997 OECD Revised Recommendation on Combating Bribery in International Business Transactions and the 1996 OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials. These conditions, in

effect, put in place some selection principles.

Faced with a lack of consensus on how to put general encouragement and basic selection principles into practice, the Working Group asked the United States to lead an ad hoc group to define criteria and entrance procedures for Working Group membership and Convention accession. Over the course of several months in the latter half of 1999, the ad hoc group produced an approach that should permit a selective increase in signatory states. It should also eliminate inappropriate motivations for membership or accession (e.g., use of accession as a prestige symbol or as a stepping stone to participation in other OECD bodies). In presupposing a slow expansion and limiting it to carefully chosen states, the policy proposals also were intended to preserve the critically important ability of the Working Group to continue its effective evaluation of Convention implementation and, equally significant, to not hinder the near-term start of enforcement reviews or broadening of Working Group attention to new issues.

Accession and membership proposals developed by the U.S.-led group were approved by the full Working Group in October 1999. They were put in final form and derestricted for public distribution later in the year. Subsequent discussion in both the ad hoc accession group and the full Working Group sessions then produced a practical application of the original proposals. Essential

elements of the accession criteria include application of an OECD Council resolution that emphasized that signatory states be “major players” and that “mutual benefit” be demonstrated.

The Working Group also agreed that other factors could be taken into account in order to provide some flexibility. For example, it was agreed the term “major player” should apply to states with regional importance or significant market shares in particularly sensitive export sectors where commercial bribery is prevalent. Defense, aviation, construction, and telecommunications were cited as examples. In addition, “mutual benefit” not only was seen as encompassing a readiness to participate constructively in Working Group deliberations, but also was regarded as dependent on the existing legal framework of a prospective signatory, including legislation for the criminalization of bribery. Without such a legal infrastructure, serious doubts were raised by many regarding the ability of a state to participate in the Working Group in a meaningful way.

A first step toward the enlargement of Convention membership was taken at an outreach session on June 5, 2000. Fourteen states and Hong Kong¹ responded to invitations issued by the OECD secretariat. At this information session, accession criteria, Convention obligations, and Working Group activities and admission procedures were explained.

A proposal for a possible anticorruption declaration

was also presented to invitees, and their comments were solicited. Such a declaration could be a useful instrument both for current parties to the Convention and for those nonsignatories interested in a closer association with anticorruption activities. It would signal to the OECD and the general business community a readiness to deal firmly with bribery and to cooperate with parties to the Convention. This is seen as a means of letting nonsignatories demonstrate their commitment to an improved investment climate and contribute to better governance standards worldwide.

Several invitees to the outreach session stressed their interest in acceding to the Convention in the near future. In anticipation of an initial review of applicants in October 2000, all participants in the session were asked to respond as soon as possible to a questionnaire seeking information on entrance qualifications. At present it is unclear how many attendees will continue their interest, be offered the opportunity to join the Working Group, and ultimately accede to the Convention. Nevertheless, it would be reasonable to conclude that a small number of qualified applicants could satisfy the conditions for Working Group observership or full membership in the coming year.

¹Attendees were Benin, Columbia, Croatia, Estonia, Hong Kong, Latvia, Lithuania, Malaysia, Peru, Romania, Russia, Slovenia, South Africa, Thailand, and Venezuela.